

A new approach to work-hour instability

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Before the 1938 enactment of the Fair Labor Standards Act (FLSA), workers often faced subsistence wages and untenably long work hours. The FLSA was created to ensure a basic standard of living for all workers. The approach was twofold: a minimum wage was established so workers could earn livable wages, and overtime pay was mandated to help guard against exploitatively long work hours. In “Underwork, work-hour insecurity, and a new approach to wage and hour regulation” (*Industrial Relations*, October 2015), authors Charlotte Alexander and Anna Haley-Lock juxtapose the workplace conditions the FLSA was designed to address with the challenges faced by hourly or low-wage workers in today’s labor force. Alexander and Haley-Lock find the FLSA only partially addresses the needs of today’s workers, many of whom have work hours that are too few, too variable, and too unpredictable.

Alexander and Haley-Lock focus on hourly or low-wage workers who are subject to “just-in-time scheduling,” meaning they can be sent home before the end of a scheduled shift when there is a lag in customer traffic. This phenomenon, which is also known as “early send home,” is a function of an employer’s goal to reduce or eliminate labor costs. Workers in these situations cannot predict their earnings or plan ahead, and worklife balance for them is tenuous.

Some unions, some private employers, and some states have attempted to address the problem of work-hour insecurity. Analyzing data on New York City retail workers and data from the Current Population Survey, the authors assess the efficacy of state reporting-pay or “show-up pay” laws, which disincentivize sending workers home early and help to stabilize work hours and earnings. The laws require employers to pay for a minimum number of hours of an employee’s scheduled shift, whether worked or not. Different variations of reporting laws have been enacted in seven states and the District of Columbia.

The authors find that employer noncompliance with reporting-pay laws along with only modest financial penalties for reporting-pay violations reduce the positive impact of these laws. Moreover, some employers react by shortening the lengths of shifts they schedule or classifying more workers as contractors. According to Alexander and Haley-Lock, the FLSA is still necessary for workplace rights, but it needs to be revised or new legislation needs to be enacted to provide protection for workers facing work-hour instability. The authors call for a more robust national reporting-pay law that “would require payment of the required minimum hours at a higher rate than a worker’s regular rate of pay, would not be linked to a worker’s scheduled shift length, and would contain greater penalties for violation.”